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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Policies and Rules for the Direct Broadcast Satellite Service	)	**IB Docket No. 98-21**
	)	
	)	
	)	
To: The Commission	)	

COMMENTS OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Pursuant to Section 1.415 of the Commission's Rules and Regulations, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[1] NRTC urges the Commission to promote competition in the Multi-channel Video Programming Distribution ("MVPD") market by adopting a blanket prohibition on the ownership of DBS licenses by cable operators.

I. BACKGROUND

1. NRTC is a non-profit cooperative association comprised of 521 rural electric cooperatives and 231 rural telephone systems located throughout 48 states. NRTC's mission is to assist its members and affiliates in meeting the telecommunications needs of more than 60 million American consumers living in rural areas. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of

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1 63 Fed. Reg. 11202 (March 6, 1998).

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information, education and entertainment programming to rural America, on an affordable basis and in an easy and convenient manner, just as those services are available over cable in more populated areas of the country. In short, NRTC seeks to ensure that rural Americans receive the same benefits of the modern information age as their urban counterparts.

2. In 1992, NRTC entered into an agreement with Hughes Communications Galaxy, Inc., the predecessor in interest to DirecTV, Inc., ("DirecTV") to launch the first high-powered DBS service offered in the United States. NRTC members and affiliates invested more than $100 million to capitalize the first DBS launch, and in return received distribution rights for DirecTV programming ("DirecTV®") in specific regions of the country. NRTC, its members, and affiliated companies currently market and distribute up to 175 channels of popular cable and broadcast programming to more than 790,000 rural households equipped with 18" DBS receiving antennas. Additionally, using C-Band technology, NRTC and its members market and distribute packages of satellite-delivered programming called "Rural TV®" to some 60,000 home satellite dish ("HSD") subscribers throughout the country.

3. The Commission released the NPRM in the instant proceeding to "seek comment on a number of issues concerning horizontal concentration within the multi-channel video programming (MVPD) market."[2] The Commission noted that unlike other

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2 NPRM at ¶ 1.

video service providers such as broadcast television and cable, DBS operators have never been subject to national limits on audience or subscriber reach, or cross-ownership restrictions with other MVPDs such as cable systems.[3] Furthermore, the Commission noted that in 1992, Congress considered whether to introduce a cable DBS cross-ownership limitation, but that it decided such a ban would be premature because there were no DBS systems operating in the U.S. at the time.[4] However, Congress expressed its desire to allow "the Commission to exercise its existing authority to adopt such limitations should it be determined that such limitations would serve the public interest."[5] The Commission noted that it is considering the DBS transfer applications of PRIMESTAR Partners, a group of large cable Multi-System Operators ("MSOs") that also have ownership interests in a number of national cable programming services, and it asked whether, given the status of competition in the MVPD market, it is appropriate to consider adopting rules governing DBS ownership and cross-ownership with other entities.[6]

II. COMMENTS

4. NRTC is concerned about the lack of competition in the MVPD market and cable's continued monopoly stronghold of the market. To deter cable from

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[3] Id. at ¶ 54.

[4] Id. at ¶ 55.

[5] Id.

[6] Id. at ¶ 58.

squelching competition in the MVPD market, NRTC agrees with the Commission that a formal rule banning cable ownership of DBS licensees would provide "greater predictability and consistency and avoid the need to address specific ownership questions on an individual basis in licensing proceedings."[7]

5. While, as reflected in the Commission's 1997 *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming* ("1997 Competition Report"), DBS subscribership has increased in recent years to the point that DBS systems have a higher combined subscribership than any other MVPD alternative to incumbent cable systems,[8] DBS has not yet come close to the level of penetration necessary to compete equally with incumbent cable providers or to have a significant restraining effect on cable rates. The 1997 Competition Report shows -- far and away -- that incumbent cable television operators continue to be the primary distributors of multichannel video programming,[9] and that local markets for the delivery of video programming remain highly concentrated and are still characterized by barriers to both entry and expansion by competing distributors.[10] Permitting cable operators, especially the

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[7] Id.

[8] Cable operators serve 87% of the MVPD market; DBS and Direct-to-Home ("DTH") operators serve 9.8% of the market; SMATV serves 1.58% of the MVPD market; and MMDS serves 1.49% of the MVPD market. 1997 Competition Report at Appendix E, Table E-1.

[9] Id.

[10] Id. at ¶ 11.

handful of MSOs which already dominate the cable and in turn the MVPD market, to hold a DBS license would not promote competition. DBS ownership by cable would make it increasingly difficult for competing MVPDs to enter the market at the level needed to keep video programming rates in check and promote better and innovative services. NRTC urges the Commission to take affirmative measures to prevent cable from increasing its market power through entry into the DBS market. To that end, NRTC urges the Commission to prohibit any cable operator, cable MSO or any group of cable operators, MSOs or affiliated entities from acquiring a controlling interest in a DBS licensee.

6. Problems related to the control of DBS spectrum by cable affiliated entities is highlighted by PRIMESTAR's application to transfer DBS authorization at the 119-degree and 110-degree W.L. orbital locations. PRIMESTAR's DBS transfer applications launched a review proceeding in which the applicants, competing MVPDs such as NRTC, and public interest groups opposed the transfer. NRTC and other competing MVPDs have outlined a number of anticompetitive concerns raised by the applications while PRIMESTAR has yet to offer tangible measures as to how it would avoid using its cable affiliations to gain an unfair competitive advantage over other MVPDs. The Commission and the Department of Justice also are reviewing the impact of a full-CONUS DBS license being controlled by cable interests.

7. The principle concern raised by PRIMESTAR's transfer applications is PRIMESTAR's lack of incentive to use DBS spectrum to compete against its affiliated cable operators. NRTC argued in Comments and Reply Comments to PRIMESTAR's applications that the potential to stifle competition in the MVPD market would be aggravated in the PRIMESTAR case because PRIMESTAR's control by the five largest cable MSOs in the country would virtually eliminate any possibility that PRIMESTAR would be free to compete against cable in any extended section of the country. NRTC argued that instead of using the DBS authorization to provide video programming services in competition with cable, PRIMESTAR would more likely use the DBS authorization to provide services complementary to the services provided by its affiliated cable operators. The full potential of DBS as a competitive force to keep video programming prices fair and accessible to most Americans and to increase the quality of video programming services cannot be realized if a DBS license were to be used primarily to provide an ancillary service to cable.

8. Another concern raised by the PRIMESTAR applications -- which is applicable to the broader issue of cable control of DBS licenses -- is that because PRIMESTAR is affiliated with entities controlling a substantial interest in popular video programming services, it would gain an unfair bargaining advantage with its cable MSO owners in obtaining these programming services which all MVPDs would need to compete against cable operators. This concern is aggravated by PRIMESTAR's proposed affiliation with NewsCorp. which also controls several popular video programming

services. Because the Commission's program access rules may not be applicable to NewsCorp., NRTC also is concerned over the potential of PRIMESTAR entering into exclusive carriage arrangements for programming distributed by NewsCorp.'s subsidiaries, should the PRIMESTAR roll-up occur. Finally, NRTC is concerned over the potential of PRIMESTAR using revenues gained from existing cable customers to cross-subsidize its DBS service.

9. There is no need for the FCC to maintain its case-by-case approach to review subsequent requests by cable affiliated entities to hold a DBS license because, as demonstrated by the PRIMESTAR applications, there is no evidence that increased control of the DBS market by a cable-affiliated entity would stimulate competition in the video programming distribution market. Instead, review of PRIMESTAR's applications clearly indicates that further barriers to competition are presented by cable ownership of DBS licensees. A rule prohibiting DBS ownership by cable-affiliated entities would provide competing MVPDs and the public assurance that DBS spectrum will continue to be used to enhance competition in the video programming market, not to protect the market power of entrenched cable interests.

10. The FCC should not hesitate to implement a cable/DBS cross-ownership ban because of the Commission's desire to maintain bare boned, "streamlined" DBS regulations. The public interest benefits of a cable/DBS cross-ownership restriction far outweigh the benefits of maintaining a minimalist regulatory scheme.

III. CONCLUSION

11. NRTC has long urged the Commission to take more aggressive action to promote competition in the MVPD market. A cable/DBS cross-ownership ban would be the most efficient means to eliminate the threat of cable operators using their existing market power to expand their cable monopolies with DBS spectrum.

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative respectfully requests that the Commission encourage the development of competition in the MVPD market by implementing a cable/DBS cross-ownership ban.

Respectfully submitted,

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